





1 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
2 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
3 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
4 collector may not use any false, deceptive, or misleading representation or means in connection  
5 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
6 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
7 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
8 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
9 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
10 connection with the collection of a debt.  
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12 13. In enacting the FDCPA, the United States Congress found that “[t]here is  
13 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
14 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
15 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
16 additionally found existing laws and procedures for redressing debt collection injuries to be  
17 inadequate to protect consumers. 15 U.S.C. § 1692b.  
18

19 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
20 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
21 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
22 collection practices are not competitively disadvantaged, and to promote consistent State action  
23 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
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## 25 **FACTUAL ALLEGATIONS**

15. Defendant and others it retained placed harassing and abusive collection calls to

1 Plaintiff seeking and demanding payment for an alleged consumer debt of another person.

2 16. Upon information and belief, the alleged debt Defendant was seeking to collect  
3 arose out of transactions, which were primarily for personal, family, or household purposes.

4 17. Defendant and its employees placed repeated telephone calls to Plaintiff's home  
5 telephone in or around April 2011.

6 18. Defendant identified the debtor as "Stephanie Penland," Plaintiff's adult daughter.

7 19. Plaintiff asked Defendant's representative why he was being contacted in  
8 connection with his daughter's alleged debt as his daughter did not reside with him.

9 20. Defendant's representative falsely stated that Plaintiff's daughter had provided his  
10 name as a reference.

11 21. Upon information and belief, Plaintiff's daughter never provided Plaintiff as a  
12 reference.

13 22. Plaintiff orally instructed Defendant's representative to cease and desist from any  
14 further telephone calls.

15 23. Despite Plaintiff's instructions not to contact him, Defendant and others it  
16 retained continued to contact Plaintiff in its attempts to collect a debt on at least two additional  
17 occasions.

18 24. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of  
19 privacy.

20 25. Defendant failed to update its records to avoid further harassment of Plaintiff.

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24 **CONSTRUCTION OF APPLICABLE LAW**

25 26. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer

1 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
2 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
3 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status  
4 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

5         27. The FDCPA is a remedial statute, and therefore must be construed liberally in  
6 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
7 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
8 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the  
9 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
10 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
11 2002).

12         28. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
13 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
14 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
15 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
16 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
17 and the fact that a false statement may be obviously false to those who are trained and  
18 experienced does not change its character, nor take away its power to deceive others less  
19 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
20 ensures protection of all consumers, even naive and trusting, against deceptive collection  
21 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
22 collection notices. Clomon, 988 F. 2d at 1318.  
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**COUNT I**

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff that another person owed a debt, specifically “Stephanie Penland”;
- c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt for “Stephanie Penland”;
- d. Defendant violated § 1692c(b) of the FDCPA by communicating with Plaintiff about a debt allegedly owed by “Stephanie Penland”;
- e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- f. Defendant violated § 1692d(5) of the FDCPA by causing Plaintiff’s telephone to ring repeatedly or continuously with in the intent to annoy, harass or abuse Plaintiff;
- g. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt; and
- h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

1 WHEREFORE, Plaintiff, THOMAS PENLAND, respectfully pray for a judgment as  
2 follows:

- 3 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §  
4 1692k(a)(1);
- 5 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to  
6 15 U.S.C. § 1692k(a)(2)(A);
- 7 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
8 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 9 d. Any other relief deemed appropriate by this Honorable Court.
- 10

11 **DEMAND FOR JURY TRIAL**

12 PLEASE TAKE NOTICE that Plaintiff, THOMAS PENLAND, demands a jury trial in  
13 this case.

14  
15 DATED: 07/07/11

RESPECTFULLY SUBMITTED,

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